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CORRESPONDENCE

With the Federal Government, and accompanying papers, respecting
the Provincial Boundary since last Session.

By Command.

A. S. HARDY.

14TH DECEMBER, 1882.

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1.—DESPATCH FROM THE LIEUTENANT - GOVERNOR, ENCLOSING TO
THE SECRETARY OF STATE THE RESOLUTIONS OF THE LEGIS-
LATIVE ASSEMBLY.

TORONTO, March 10th, 1882.

SIR,—I have the honour to herewith transmit, for the information of your Govern-
ment, a copy of Resolutions respecting the Boundary Award, adopted by the Legislative
Assembly of Ontario on the 9th instant.

I have the honour to be, Sir,
Your obedient servant,

JOHN BEVERLEY ROBINSON,
Lieutenant-Governor of Ontario.

The Honourable
The Secretary of State, Ottawa.

2.—DESPATCH OF THE SECRETARY OF STATE, ACKNOWLEDGING
RECEIPT OF RESOLUTIONS.

OTTAWA, 15th March, 1882.

SIR,—I am directed to acknowledge the receipt of your despatch of the 10th instant,
enclosing a printed copy of a Resolution respecting the Boundary Award, adopted by
the Legislative Assembly of the Province of Ontario, on the 9th instant.

I have, etc.,

EDOUARD J. LANGEVIN,
Under Secretary of State.

is Honour the Lieutenant-Governor
of Ontario, Toronto.

3.—DESPATCH FROM THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR OF ONTARIO.

OTTAWA, 2nd September, 1882.

SIR,—I am commanded by His Excellency the Governor-General to inform you that on the fourth day of April last, during the late Session of the Parliament of Canada, the following resolution was adopted:—

Resolved, That in the opinion of this House “it is expedient that the western and northern boundaries of the Province of Ontario should be finally settled by a reference to, and an authoritative decision by, either the Supreme Court of Canada, or the Judicial Committee of the Privy Council in Great Britain, or by the Supreme Court in the first place, subject to a final submission to the Judicial Committee, as the Province of Ontario may choose; that such decision should be obtained either on appeal in a friendly action brought for the purpose, or by reference to the said Courts, or either or both of them by Her Majesty, under the powers conferred upon her by the Imperial and Canadian Parliaments, as the Government of Ontario may prefer; and that the said reference should be based upon the evidence collected and printed, with any additional documentary evidence, if such there is, and that pending the reference, the administration of the lands shall be entrusted to a joint commission appointed by the Governments of Canada and Ontario.”

This resolution was passed by a large majority of the members of the House, the Yeas being one hundred and sixteen and the Nays forty-four.

His Excellency desires me to invite the attention of your Government to this unmistakable expression of opinion of the Representatives of the People of the Dominion, and further to state that his Ministers are not only prepared, but anxious, to make all necessary arrangements in conjunction with the Government of Ontario for giving effect to such resolution with all convenient speed.

I have the honour to be, Sir,

Your obedient servant,

HECTOR L. LANGEVIN,
For Secretary of State.

His Honour the Lieutenant-Governor of the Province of
Ontario, or the Officer administering the affairs of the said Province.

4.—THE REPORT OF THE ATTORNEY-GENERAL OF ONTARIO ON THE FEDERAL DESPATCH OF 2ND SEPTEMBER, 1882.

The undersigned has had under consideration the despatch of the Federal Secretary of State, bearing date 2nd September, 1882, communicating a resolution of the House of Commons passed on the 4th April, 1882, with respect to the disputed territory.

The despatch states, that His Excellency's Ministers are prepared, and anxious, to make all necessary arrangements, in conjunction with the Government of Ontario, for giving effect to this resolution with all convenient speed. In view of this anxiety, it is remarkable that the resolution was not passed until after the Ontario Legislature had been prorogued, and it had thereby become impossible to take the sense of the House of Assembly on the resolution; that, while the resolution required a Statute of the Parliament of Canada to make it effectual, Parliament was prorogued without any such Statute having been passed, or even proposed; that, though the Dominion Act of 1881 respecting the Boundaries of Manitoba had made, and was designed to make, the concurrence of that Province necessary to any settlement of the question in dispute, and though the Legislature of Manitoba was in session after the passing of the resolution by the House of Commons, from 27th April to 30th May, yet the Federal Government allowed the session to pass without obtaining, or seeking, the necessary concurrence of that Province; and that it was not until long after all these periods had passed, nor for five months subsequently to the adoption of the resolution, that the short despatch now under consideration was communicated to His Honour the Lieutenant-Governor.

The despatch further mentions, that the Resolution was passed by a large majority of the Members of the House of Commons (116 to 44); and the despatch invites the attention of this Government "to this unmistakable expression of opinion" on the part of the House of Commons.

The undersigned would respectfully recommend that the attention of the Federal Government be in turn invited to the fact, that resolutions on the same subject were passed by the Ontario Assembly in the Legislative Sessions of 1880 and 1881, with but one dissentient voice on either occasion, and in the Session of 1882 by a majority of two to one; and that the attention of the Federal Government be called to the "unmistakable expression of opinion" on the part of the representatives of the people of the Province which is shown by the votes on these resolutions. The resolutions were promptly communicated to the Dominion Government, and have received no attention from that Government.

The resolutions thus passed by the Assembly in 1880 (3rd March) set forth, with an accuracy which has not been impugned, a history of the Arbitration and of some previous proceedings, and insisted that "the rights of this Province, as determined and declared by the Award, * * should be firmly maintained;" and the House pledged "its cordial support * * to all necessary or proper measures * * to sustain the Award." All

parties in the House voted for these resolutions, which were therefore an expression of Ontario opinion far more distinct and unmistakable than any opinion indicated by the vote on the Resolution of the House of Commons. The following is the text of these resolutions :—*

“That by an agreement made between the Government of Canada and the Government of Ontario, it was decided that, subject to the approval of the Parliament of Canada and the Legislature of Ontario, the questions which had arisen concerning the northerly and westerly boundaries of the Province of Ontario should be determined by arbitration ; and that by Orders in Council, passed by the respective Governments, it was declared, that the determination of the Arbitrators appointed to make such award should be ‘final and conclusive.’

“That in accordance with the agreement entered into by the respective Governments, the Right Honourable Sir Edward Thornton, Her Majesty’s Minister at Washington, the late Honourable R. A. Harrison, Chief Justice of Ontario, and the Honourable Sir Francis Hincks, were agreed upon by Orders in Council of the respective Governments, as Arbitrators to determine the northerly and westerly boundaries of the Province of Ontario.

“That on the 3rd day of August, 1878, the said Arbitrators delivered their award, wherein they declared and determined what are the northerly and westerly boundaries of the Province of Ontario.

“That in a despatch dated 31st December, 1878, from His Honour the Lieutenant-Governor of Ontario, to the Secretary of State for Canada, His Honour intimated to the Government of Canada, that during the approaching session of the Legislature a measure would be introduced ‘to give effect by way of declaratory enactment or otherwise, to the award made by the Arbitrators to determine the northerly and westerly boundaries of the Province of Ontario ;’ and that His Honour, in the same despatch, also stated he would be glad to learn that such legislation as might be necessary to give effect to the award would be had at Ottawa in the next session of the Parliament of Canada.

“That in a despatch dated 8th January, 1879, the Government of Canada acknowledged the receipt of the despatch last mentioned, and stated that the same would not fail to receive all due consideration ; and that no intimation was given, in reply to His Honour’s communication, that the Government of Canada would refuse to be bound by the award of the Arbitrators, or to submit to the Parliament of Canada a measure giving effect thereto.

“That by an Act of the last session, the Legislature of Ontario did consent that the boundaries of the Province, as determined by the said award, should be declared to be the northerly and westerly boundaries of the Province of Ontario, and by a further Act made provision for the administration of justice in the northerly and westerly parts of Ontario.

“That on the 16th January, 1869, the Government of the Dominion of Canada, through its members and representatives, contended before Her Majesty’s Imperial Government that the western boundary ‘extended to and included the country between the

Lake of the Woods and Red River,' and that the northern boundary included 'the whole region of Hudson's Bay.'

"That the boundaries then claimed by the Government of the Dominion, on behalf of Canada, as against the pretensions of the Hudson's Bay Company, would, on the same grounds, be the boundaries of the Province of Ontario, and would give to Ontario a territory vastly in excess of that embraced in the award of the Arbitrators.

"That by an Order in Council, approved on the 28th November, 1871, the constitutional advisers of His Excellency the Governor-General of Canada, obtained the sanction of the Crown to the statement that 'it was of much consequence that the ascertaining and fixing on the ground of the boundary line in question, should be, as far as possible, expedited;' that by another Order in Council, approved on the 9th April, 1872, His Excellency's Advisers obtained the assent of the Crown to the opinion that both Governments would 'feel it their duty to settle, without delay, upon some proper mode of determining, in an authoritative manner, the true position of such boundary;' that by another Order in Council, approved on the 7th November, 1872, His Excellency's Advisers obtained the further sanction of the Crown to the statement that 'the importance of obtaining an authoritative decision as to the limits, to the north and to the west, of the Province of Ontario had already been affirmed by a Minute in Council;' and 'that the establishment of criminal and civil jurisdiction and the necessity of meeting the demands of settlers and miners for the acquisition of titles to lands, combined to render such a decision indispensable.'

"That although so long since as the 12th November, 1874, and as the result of protracted negotiations, the Government of Canada, by Order in Council, consented to concur in the proposition of the Government of Ontario to determine the northern and western boundaries of Ontario by means of a reference; and although information was from time to time given to Parliament by the Government of Canada of the progress of the arrangements for such reference, no action was taken, nor was any effort made, by or in the Parliament of Canada, previous to the award being given, to arrest or prevent the reference agreed upon by the respective Governments of Canada and Ontario; and that in May, 1878, the Parliament of Canada granted \$15,000 to defray the expenses of the Ontario Boundary Commission.

"That this House regrets that, notwithstanding the joint and concurrent action of the respective Governments in the premises, and the unanimous award of the Arbitrators, the Government of Canada has hitherto failed to recognise the validity of the said award, and that no legislation has been submitted to Parliament by the Government of Canada for the purpose of confirming the said award.

"That nevertheless it is, in the opinion of this House, the duty of the Government of Ontario to take such steps as may be necessary to provide for the due administration of justice in the northerly and westerly parts of Ontario, and that this House believes it to be of the highest importance to the interests of this Province, and to the securing of the peace, order and good government of the said northerly and westerly parts of Ontario, that the rights of this Province, as determined and declared by the award of the arbitrators appointed by the concurrent agreement and action of the Governments of Canada and Ontario, should be firmly maintained.

"That this House will at all times give its cordial support to the assertion, by the Government of Ontario, of the just claims and rights of this Province, and to all necessary or proper measures to vindicate such just claims and rights, and to sustain the award of the Arbitrators by which the northerly and westerly boundaries of this Province have been determined."

In the Session of 1881, the people's representatives in the Provincial Legislature again expressed to the same effect the public sentiment, and their own, as to the rights of the Province, and as to the policy which its Government should pursue. The resolutions of this Session were passed by a vote of 75 to 1, all parties again voting for them. The text of these resolutions (passed 3rd March, 1881) is as follows* :—

"That this House deeply regrets that notwithstanding the unanimous award made on the 3rd August, 1878, by the Arbitrators appointed by the joint and concurrent action of the Government of Canada and the Government of Ontario to determine the northerly and westerly boundaries of this Province, no legislation has been submitted by the Government of Canada to the Dominion Parliament for the purpose of confirming that award, nor has the validity of the award yet been recognised by the Government of Canada.

"That the omission of the Government and Parliament of Canada to confirm the award is attended with grave inconvenience, has the effect of retarding settlement and municipal organization, embarrasses the administration of the laws, and interferes with the preservation of the peace, the maintenance of order, and the establishment of good government in the northerly and north-westerly parts of the Province of Ontario.

"That it is the duty of the Government of Ontario to assert and maintain the just claims and rights of the Province of Ontario as determined by the award of the Arbitrators ; and this House hereby re-affirms its determination to give its cordial support to the Government of Ontario in any steps it may be necessary to take to sustain the award, and to assert and maintain the just claims and rights of the Province as thereby declared and determined."

On the 9th March, 1882, the Ontario Legislative Assembly for the third time expressed its views to the same effect, in resolutions which were carried by a vote of 50 to 25 ; or rather the only amendment to them which was proposed was negatived by a vote of 50 to 25. The first nine of the resolutions are as follows† :—

"That, having considered the despatches of the Government of Ontario to the Federal Government, dated respectively 31st December, 1881, and 18th February, 1882, and a report of the Attorney-General, dated 1st November, 1881, on the subject of those portions of this Province to which the Federal authorities have asserted an unjust and unfounded claim, this House desires to record its concurrence in the views and representations which are expressed in the said despatches and report.

* Jour. Leg. Assembly, 1881, vol. 14, p. 151. † Jour. Leg. Assembly, 1882, vol. 15, p. 154 *et seq.*

“That the persistent endeavours of the Federal authorities to deprive this Province of one half of its territory are, in the interest of the people of Ontario, to be opposed by every constitutional resort within the reach of this Province.

“That this House protests against the conduct of the Federal Government in enforcing a pretended ownership in this Territory ; in assuming to make sales therein without the concurrence of the Provincial authorities ; in promoting, under colour of Federal grants and licenses, the destruction of its valuable timber ; in inducing the inhabitants to set at defiance the laws and authority of this Province ; in prevailing on a neighbouring Province to assume jurisdiction in the Territory by establishing courts and by other executive acts, and thereby to assist the Federal Government in neutralizing or embarrassing the territorial jurisdiction of this Province.

“That a unanimous Award was made on the 3rd August, 1878, determining the boundaries between this Province and the territories of the Dominion ; that this Award was made in pursuance of a reference designed to be binding and conclusive, entered into by the two Governments in good faith, with the knowledge of the Parliament of Canada, and acquiesced in until long after the proceedings under the reference had terminated ; that this Award was made by distinguished Arbitrators of the highest character, after an exhaustive collation of all known evidence bearing on the subject ; that the Award assigned to Ontario less territory than His Excellency's present advisors, as well as previous Canadian Governments, had, in other contentions, invariably claimed to lie within this Province ; that more than two years elapsed before the Federal Government gave any notice of an intention to reject the Award ; and that the course of the Federal Government in now rejecting such an Award is unprecedented in British practice, is opposed to the usages of civilized government, and is a grievous wrong to the people of Ontario.

“That the extension of Manitoba by the Federal Act of last Session receives, so far as the Territory added is undisputed, the hearty approval of the inhabitants of Ontario ; but, in the name of the people of this Province, this House protests against the transfer, attempted by the same Act, of 39,000 square miles of the Territory which was awarded to this Province, and which forms by far the most valuable portion of that Territory ; that such transfer greatly aggravated the difficulties already created by the unjust proceedings of the Federal Government, and can only be regarded as an act of direct antagonism and hostility to the interests and rights of this Province.

“That, while the attempted transfer to another Province of any part of the Territory awarded to Ontario was a grievous wrong to this Province, this House cannot too strongly express the injustice of including in the transfer 7,000 square miles of the Ontario District of Algoma, south of the Height of Land, which before Confederation had been an undisputed part of Upper Canada *de facto* ; had been settled by its people, and governed by its laws, to which no counter claim had been set up from any quarter, and which, after Confederation, continued to be regarded and dealt with as an undisputed part of this Province, until the present controversy arose ; that the British North America Act expressly declared that what ‘formerly constituted the Province of Upper Canada shall constitute the Province of Ontario ;’ and, therefore, that every consideration of Imperial intention, as well as of justice and fair dealing, demanded from the

Federal authorities a confirmation of the title of Ontario to this part of the Territory, even if such confirmation had, in law, been required.

"That it is on the westerly side of this Province that, independently of the Award, the title of Ontario to the Territory is the most clear, and the Territory the most valuable ; that it is in this part of our unorganized territory that undisputed authority and a vigorous administration of the law are most needed for the maintenance of peace and order, the suppression of illicit liquor-selling, and of drunkenness, immorality and crime ; that the course of the Federal Government has to a large extent paralyzed the efforts hitherto made under the authority of this Province for the prevention of disorder ; that by the effect of the Dominion Act of last Session relating to Manitoba, and by the action taken thereunder with the concurrence and approval of the Federal Government, two sets of Provincial laws distract settlers ; two sets of Provincial Courts and officers are set in array against one another ; no sure title can be obtained to any land or timber in the Territory ; squatters and trespassers, so far as Federal authority can accomplish such a result, are to be the only settlers ; the country is being stripped of the timber which is its most valuable product ; capital and immigration are diverted to other territories, where a settled Government and settled laws prevail ; an interest antagonistic to this Province is created in those who go to the Territory, by giving to them seeming titles, the validity of which depends on resisting successfully the authority of Ontario ; and complications are created which, if allowed to continue without interference, will seriously impede the practical incorporation of the territory with this Province to which it belongs.

"That the policy of the Federal authorities is inexplicable, except in the light of the avowal which, in the debate in the House of Commons on the Manitoba Bill, was publicly made by the First Minister, when he announced that the purpose was to 'compel' the Government of this Province not to insist on the Awarded Boundaries ; was to 'compel' them to 'come to terms' ; and to induce such a condition of the Territory that 'they must do so' ; and the Minister predicted that the Government of this Province would 'come to terms quickly enough when they found they must do so.' That this House approves of the refusal of the Government of this Province to be coerced into consenting to the proposals contained in the despatch of the Federal Secretary of State to His Honour the Lieutenant-Governor, dated the 27th January last, which were the only terms proposed to this Province since the Award.

"That it would be most unjust for the Federal authorities to entangle this Province in a second litigation, especially after having delayed for more than three years since the Award to propose any mode or terms of settlement. But this House concurs with the Government of the Province in recognising the possible expediency, under all the circumstances, of an immediate reference to the Privy Council of the questions of the Award and the Boundaries, on the condition (in order to avoid further delay and unnecessary difficulty) that the reference shall be based on the evidence collected and printed for the Arbitrators, with any additional documentary evidence, if such there is ; and on the further condition that, pending the reference, the territory, its population and lands shall, by the legislative consent of all parties, be subject in all respects to the laws of this Province, including the jurisdiction of its Legislature and Government."

As from the despatch under consideration it appears that His Excellency's Advisers are now "not only prepared, but anxious, to make all necessary arrangements in conjunction with the Government of Ontario, for giving effect to" the Resolution of the House of Commons with all convenient speed, the undersigned respectfully recommends that the Federal Government be reminded that, on the other hand, Your Honour's Advisers (as the despatches to the Federal Government shew) have always been prepared and anxious "to make all necessary arrangements in conjunction with the Government of" the Dominion, for giving effect, with all convenient speed, to the Resolutions of the House of Assembly.

The Resolution of the House of Commons deals with two subjects only ; it (1) expresses approval of a reference to the Supreme Court of Canada, or to the Judicial Committee of the Privy Council in Great Britain, as this Province may choose ; and (2) suggests "that, pending the reference, the administration of the lands shall be entrusted to a Joint Commission appointed by the Governments of Canada and Ontario." The Resolution says nothing whatever with respect to the no less essential subjects of the Government of the territory, and of Legislative authority therein, pending the further proceedings which the Resolution proposes.

The proposal of a reference to the Supreme Court of the Dominion, is but a repetition of a proposal to the same effect which was first made in a despatch of the Federal Government, dated 27th January, 1882,* and was declined by a despatch from the Lieutenant-Governor on the 18th February following.† This action on the part of the Ontario Government was afterwards approved by the Provincial Assembly, in the first of the Resolutions of the 9th March, 1882, already quoted. One ground of objection to a reference to the Supreme Court was, that that course "would create years of further delay, and involve great additional labour and expense, and without any advantage, as the final decision would be by the Privy Council ;" and it was observed "that if the object were delay, no better means of delaying a conclusive decision could be devised." The proposal is renewed in the Resolution of the House of Commons, but the force of the objections to it has not, in the despatch accompanying the Resolution, or in any other communication to this Government, been denied or questioned. Indeed the First Minister, in the Commons' debate on the Manitoba Bill, 18th March, 1881, affirmed that the matter could "only be decided by slow trial."‡

As regards the alternative of a reference to the Judicial Committee of the Privy Council in Great Britain, the Federal despatch of the 27th January last asserted a "difficulty of agreeing on facts, and settling a case to be submitted to the Privy Council ;" and expressed a strong preference for a decision either by an English ex-judge or by the Supreme Court, but intimated a willingness to concur in a reference to the Judicial Committee of the Privy Council "if it be preferred by the two Provinces of Ontario and Manitoba ;" not otherwise. The same despatch stated that His Excellency's advisers "would readily consent to use the influence of the Dominion Government with that of Manitoba, to obtain the submission of the whole question as to the boundary to the Supreme Court of Canada ;" and trusted "with confidence that their exertions with the Government of

* Ont. Bdy. Pap., 1882, p. 468. † *Ib.* p. 480. ‡ Official Report, H. C. Debates, 1881, page 1455.

Manitoba would be attended with success, and that such submission would be agreed to by that Government." A belief was also stated, "that the Government of Manitoba would readily acquiesce in the question of the boundary line being brought for decision either before the Supreme Court of Canada or" an English ex-judge, as therein proposed. But no such promise of using "influence" with the Government of Manitoba, and no such "confidence" has been expressed, in regard to a reference to the Privy Council, in case of that course being preferred by this Province only.

The despatch communicating the resolution of the House of Commons does not suggest that the concurrence of Manitoba has since been obtained, or that any steps have since been taken for obtaining it, or that the Dominion Government intend to take any such steps, or have reason to expect such concurrence.

It is to be observed also, that the resolution was by the House of Commons only, and that the Senate passed no like resolution.

Our experience in the case of the Award shows that without the antecedent statutory concurrence of the Parliament of Canada and the Legislature of Manitoba, acquiescence in the correctness of any decision that the territory belongs to this Province could not be relied upon. It is to be remembered that it was the opinion of Sir Richard Bethel, Attorney-General (afterwards Lord Chancellor Westbury), and Sir Henry S. Keating, Solicitor-General (afterwards the Right Honorable Mr. Justice Keating), given in July, 1857, that the decision of the Judicial Committee of the Privy Council would not, in the case of a reference between Canada and the Hudson Bay Company, "have any effect as a binding judicial determination," and that the determination of the Privy Council should be "carried into effect by a declaratory Act of Parliament."*

The proposal made by the resolution of the House of Commons that, pending the suggested reference, "the administration of the lands should be provided for by entrusting it to a joint commission appointed by the Governments of Canada and Ontario," is new. In the despatch of the 27th January, 1882, the Federal Government had refused absolutely to negotiate respecting the lands, insisting that "the question of the title to the land in the disputed territory should not be confused nor mixed up in any way with that relating to the boundaries;" and that "the Indians and the Crown, and those claiming under them, have rights which can be decided by the ordinary tribunals of the Province within which the land in dispute may finally be found."†

But the resolution does not suggest how the Land Commission now proposed is to be constituted; of how many members it is to consist; how many of the number are to be appointed by each party; what the tenure of the office is to be; or what are to be the powers of the commissioners. Nor does the despatch under consideration give the views of the Dominion Government in regard to any of these particulars. It is obvious that on these the usefulness of the Commission, or the propriety of acceding to the proposal, essentially depends. The policy of the Federal Government in dealing with Crown Lands is understood to be different from the policy which is pursued by this Government, and which has, as we believe, been proved by experience to be for the general interest. Thus, while the Dominion Government favours sales to land companies, the

* Book of Arbitration Documents, page 202. † Ont. Bdy. Papers, 1882, p. 471.

Ontario policy is to confine grants to actual settlers ; and in order to encourage settlement, provides for free grants to settlers in determinate portions of Crown territory.

It is to be remembered that His Excellency's advisers adopted in 1871 or 1872, the policy of confining Ontario to the narrow limits on which they still insist.* Whatever the reason was of the abrupt change of avowed opinion which this policy implied, the occasion of it cannot have been any reasonable, intelligent objection to this Province having more territory than these narrow limits would give it ; for, as has since been pointed out on the part of this Government,† Ontario, with these limits, would have little more than half the area of the Province of Quebec, Ontario having, without the disputed territory an estimated area of only 109,480 square miles, while Quebec (without going north of the Height of Land) has an estimated area of 193,355 square miles. The original area of Keewatin was estimated at 309,000 square miles ; the estimated area of British Columbia is 390,344 square miles ; and the Dominion has still an undistributed area of two million square miles.‡

But the opposition of Federal Ministers in the last Parliament to the Award, and to a recognition of the boundaries thereby determined, and the statements made in debate by Ministers and their supporters, placed most of the people's representatives from the other Provinces in such a position as almost to preclude any of them from supporting the rights of Ontario.

Thus, in the debate on the Manitoba Bill, the First Minister spoke of the Award as having "added an additional Kingdom to Ontario;" and suggested that such a statement had been made by the undersigned—which is incorrect ; the undersigned, on the contrary, had always contended that our Province, from its first organization as Upper Canada, comprised all, if not more than all, that the Award has assigned to it. In the same debate, the First Minister spoke of the awarded boundaries as "a boundary which cannot be supported in any court or tribunal in the world," and affirmed that "the Award was of no value ;" that "the whole case was thrown away—it looks almost as if it was deliberately thrown away. Never was such a case so given away as the case of the Dominion was on the very face of it."§

In the same Session the Minister of Justice spoke of the Award as "taking from the Dominion of Canada an immense extent of valuable territory."|| Mr. Dawson, a supporter of Ministers, and selected to move for a committee of enquiry, told the House that the Award "gives to Ontario a large extent of territory which she does not want, has never claimed, and has no earthly right to."¶ Referring to the agreement of the other Provinces to enter into the Federation he said, "Had it then been suggested that its area would, in the near future, be more than doubled by the addition of the fairest portion of the vast territories at that time claimed by, and afterwards purchased from the Hudson's Bay Company, would the other Provinces have consented to an arrangement

* Ont. Bdy. Papers, pp. 209, 218, 221, 226, 231, 238.

† Ib. p. 483.

‡ See Senate Debates 1880-1, p. 607.

§ Official Rep. Deb. H. C., 1880, pp. 1451, 1452.

|| Official R. Debates H. of C., Can., 1880, Vol. 1, p. 68.

¶ Official R. Debates, H. C. Can., 1880, p. 61.

which they must have believed would ultimately give to Ontario a vastly preponderating influence in the Confederacy?"*

The impression produced on the members from the other Provinces by the stand taken by Ministers against the Award, and by such statements as have been quoted, is illustrated by observations which fell from other supporters of the Government. One member from Lower Canada spoke with apprehension of this Province becoming, through its awarded territory, "overpowering in its greatness,"† though, with this territory, Ontario has not so large an area as either Quebec or Keewatin, or an area much exceeding the undisputed territory given to Manitoba, or much more than half the area of British Columbia.‡ Another member from Lower Canada was led to affirm, that "the basis of Confederation was the understanding—and every member, speaking in good faith, will say that it never entered the minds of the Fathers of Confederation to say otherwise—that the limits of Ontario should not extend over the region claimed by the Award of the Arbitrators; * * we know that those two Provinces did not claim this additional territory before the union * * . No one can dispute that according to the Report of the Commission Ontario's territory is made to extend far beyond the boundaries recognized at the time of the union of the Canadas,"§ Every one of these statements, though honestly believed by the speaker, is contrary to the proved facts.

It ought not to be forgotten in the other Provinces, and it is not forgotten in Ontario, that up to 1870 the position taken, and the opinion entertained, by the several Governments in which His Excellency's present Chief Adviser was either a leader or a leading member, had undeniably been the reverse of the opinion advanced and the policy pursued by the First Minister and his colleagues in 1872, and again since 1878. These Governments did not consist of Upper Canadians only, or chiefly. In the Government of the Province of Canada, Lower Canada always had as many representatives as Upper Canada had; and in the Government of the Dominion, the other Provinces have together a larger representation than Ontario has. Among the Ministers from other Provinces who belonged to the Governments which affirmed the territorial claim of our Province, were the Hon. Sir George Cartier, the Hon. Joseph Cauchon, the Hon. Sir E. P. Taché, the Hon. Sir François Lemieux, the Hon. Sir John Rose, the Hon. Peter Mitchell, the Hon. J. C. Chapais, and the Hon. Sir Edward Kenney. Some of these gentlemen though living are not now Ministers; but some of the most prominent members of the present Federal Government were Ministers when the same view was taken and insisted upon, viz.: Sir John A. Macdonald, Sir Alex. Campbell, Sir Hector Langevin and Sir Leonard Tilley.

It is not denied that the Governments referred to had, through their authorized members and otherwise, frequently and persistently claimed the territory now in question, and even more, as belonging to Upper Canada; nor is it denied that in all governmental proceedings from 1856 to 1870 or 1871, they had acted upon that view. ||

* Official Rep. Debates, H. of C., Can., 1880, p. 62.

† *Ib.*, 1882, p. 672.

‡ Ont. Bdy. Papers, 1882, p. 433.

§ H. C. Can. Deb., 1882, p. 755.

|| Report of Judge Ramsay, Appx. Com. H. of C., 1881, pp. 218, 219; Ont. Book of Arb. Doc., pp. 322 409-411.

Chief Justice Draper was sent to England in 1857 for the purpose of resisting the very claim of the Hudson's Bay Company, which under the transfer from that Company the Dominion Government are now advancing. That learned judge, in his evidence before the House of Commons, after describing the territory which was then claimed by the Hudson's Bay Company, and which is now as against Ontario claimed by the Federal authorities as the transferees of that Company, said: "We consider that that is an ill-founded claim; principally upon this ground, that it is a claim of which we can find no trace until a very modern period, and is quite inconsistent with the claims advanced by that Company for nearly a century and a half."*

The Federal authorities repudiate the Award because it does not give effect to this "ill-founded claim."

It is a matter of official record, too, that the same learned judge, in a letter dated 12th of June, 1857, addressed to the then Provincial Secretary, gave to the Government his own opinion, to the effect that Canada had a "clear right west to the line of the Mississippi, and some considerable distance north of what the Hudson's Bay Company claim."† In full accordance with this opinion of the able and learned Chief Justice, the Award assigned to Ontario territory to "a considerable distance north of" the Company's claim, and no territory west of "the line of the Mississippi."

It is not denied that in consequence of the repudiation by Canada of the Hudson Bay Company's claim, that Company in 1870 surrendered its claim to a million square miles of territory for a small fraction of its value; and, apart from any question as to the strict legal right to the territory so surrendered, Ontario might fairly claim for itself, on principles which as between individuals all courts of equity recognize and enforce, the whole benefit of a surrender obtained through claiming the territory to be part of Upper Canada before Confederation, and of Ontario afterwards as one of the Provinces of the Dominion.

It has never been suggested that the change of opinion on the part of His Excellency's Advisers in 1871 or 1872, with respect to the extent of Ontario, arose from the discovery of new evidence justifying the change.

In a paper prepared on behalf of the Dominion Government, and transmitted by the Secretary of State to the Lieutenant-Governor of Ontario in a despatch dated 14th March, 1872,‡ it was stated that "the boundary in question is clearly identical with the limits of the Province of Quebec, according to the 14th Geo. III., cap. 83, known as the 'Quebec Act,' and is described in the said Act as follows, that is to say: Having set forth the westerly portion of the southern boundary of the Province as extending along the River Ohio 'westward to the banks of the Mississippi,' the description continues from thence (*i.e.*, the junction of the two rivers) 'and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay.'" If we accept as correct this official statement of the Dominion Ministers, it will be remembered that a difference of opinion as to the westerly boundary of the Province arises

* Rep. of Com. of H. C., Eng., 1867, on the Hudson Bay Co'y, 4056.

† Book Arb. Doc., p. 391.

‡ Ont. Bdy, Papers, 1882, pp. 218, 219.

from the different constructions placed by the Dominion and the Province respectively on the term "northward;" the contention of the Dominion now being, that the word means a line due north from the point mentioned in the Statute, say in longitude $88^{\circ} 50'$ W.;* while the Ontario view is, that the term "northward" is not necessarily confined to a due north line; that it refers in the Quebec Act to the general direction of "the banks of the Mississippi," and is intended to include all the territory of Great Britain lying "northward" of the whole southern line described in the Act, up to the territory theretofore granted to the Hudson Bay Company; that, as "the banks of the Mississippi" (lying west of a due north line) to its source formed the western boundary of the British territory, they were also to form the western boundary of the Province. This was the view adopted by the Arbitrators; and that it was the true intention of the Quebec Act has been repeatedly shown from the recitals in the Act; from the language of the enacting clause; from the history and the known objects of the Bill; from the proceedings thereon in the House of Commons as reported in Cavendish's Debates, and by the Right Hon. Edmund Burke, in a letter dated the 2nd August, 1774, addressed to his correspondents of the Province of New York, whose agent he was at the time; and from the uniform interpretation of the Act by its authors and first administrators, and by their successors.†

The Royal Commission, which was issued on the 27th December, 1774, to Sir Guy Carleton as Captain-General and Governor-in-Chief of the Province of Quebec,‡ expressly described the Province of Quebec as "comprehending all our Territories, Islands and Countries, bounded on the south by a line" which is therein traced from the Bay of Chaleurs to "the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward *along the eastern bank* of the said river (Mississippi) to the southern boundary of the territory granted to the" Hudson's Bay Company. Sir Frederick Haldimand succeeded Sir Guy Carleton. His Commission is dated 18th September, 1777, and assigned to the Province the same boundary lines as the previous Commission had done. These two Commissions ought alone to remove all doubt as to the intended boundary on the western side being, not a due north line from the confluence of the Ohio and Mississippi, but a line along "the banks of the Mississippi" to its source; and on the ground, amongst others, that these Commissions show the construction placed on the Act by the Ministers of the day, and by their distinguished Law Advisers. Mr. Thurlow was Attorney-General, and Mr. Wedderburn was Solicitor-General, each of whom afterwards became Lord Chancellor. Both were members of the House of Commons at the time of the Quebec Bill, and both took an active part in the debate.

The Arbitrators have assigned to Ontario no territory west of the territory described in these Commissions.

Part of the Province having, by the Treaty of Paris, 1763, been ceded to the United States, the Definitive Treaty of 1783 made the international boundary a line the course of which is described through Lake Superior, Long Lake, etc., to the Lake of the Woods; thence through the said Lake of the Woods "to the most north-western point thereof;

* Arb. Doc., p. 207.

† Ib., p. 384.

‡ House of Commons Bdy. Com. Rep. 1880, p. 16.

and from thence on a due west course to the River Mississippi." Accordingly, the Commission issued thereafter (22nd April, 1786) to Sir Guy Carleton, as Governor-in-Chief of the Province, assigned as one of the boundaries of the Province, the line thus described "to the Lake of the Woods, thence through said lake to the most north-western point thereof" (exactly as the Arbitrators have done); and from thence in a due west course to the River Mississippi.

The Arbitrators have not assigned to the Province any territory west of the Lake of the Woods.

That the intention of the Crown and the Imperial Parliament was to give to Upper Canada as much territory as these Commissions and the Award assigned to it, if not more, is confirmed by a reference to a paper presented by His Majesty's Ministers to Parliament, when the Bill of 1791 was before Parliament for dividing the Province of Quebec into the two Provinces of Upper and Lower Canada. This paper described the line which it was proposed to draw in order to divide the then Province of Quebec into two Provinces; and this inter-provincial line is described as drawn from the head of Lake Temiscaming due north until it should strike the boundary line of Hudson's Bay, "including," as the paper stated, "all the territory to the westward and southward of the said line to the extent of the country commonly known by the name of Canada."* On the 24th of August, 1791, an Order in Council was passed referring to this paper, and dividing the Province according to it.†

On the 18th November, 1791, General Alured Clarke, Lieutenant-Governor and Commander-in-Chief of the Province of Quebec, issued a proclamation in His Majesty's name, in pursuance of instructions (dated 12th September, 1791), and of a provision for this purpose in the Imperial Act, declaring when the division should go into operation, viz., 26th November, 1791. In this proclamation the line of division between the two Provinces is described as striking "the boundary line of Hudson's Bay," and as "including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada."‡ So, in the following year (10th July, 1792), General Simcoe, the Lieutenant-Governor of Upper Canada, by proclamation divided Upper Canada into counties, and described the most westerly of these (to which the name of Kent was given) as "all the country (not being territories of the Indians) not already included in the several counties hereinbefore described, extending northward to the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada." This language was no doubt used by Imperial authority.

It is undeniable that the "country commonly called or known by the name of Canada," and mentioned in all these Official Documents, comprised all the territory awarded to Ontario, if not more.‡

Much of this evidence of the meaning of the Quebec Act was not before the Lower Canada Court, which held in the *De Reinhard* case, 1818, that Upper Canada was confined on the west to the "due North Line." The sentence pronounced by the Court in

* Arb. Doc., p. 411.

† *Ib.* 388.

‡ *Ib.* 27. Ont. Bdy. Papers, 1882, p. 314.

that case was not carried out, and, so far as known, the decision was never recognized or acted upon by the Imperial Government, or by the Government of Upper Canada before the Union, or by the Governments of Canada after the Union until 1871, or by the Courts of either Upper or Lower Canada. On the contrary, the Governments of Upper Canada and of Canada, and the Courts of Upper Canada, notwithstanding the De Reinhard case, exercised jurisdiction whenever there was occasion beyond this due north line, as freely in all respects as on this side of it.* In 1856, the Commissioner of Crown Lands—a Lower Canadian (Sir John A. Macdonald being Premier), in an Official Report, insisted, on grounds which are irresistible, that the decision in the De Reinhard case was wrong, and insisted further that this section of the Province of Canada extended even beyond the boundaries since determined by the Award.†

In a word, from 1774, when the Quebec Act was passed, until 1871, the uniform construction placed on the Act (except in the instance of the fruitless trials of 1818 in Lower Canada) was in favour of a westerly boundary at least as distant as that laid down by the Award. The most valuable part of the territory lies on the westerly side of the Province, and it is this part, to the extent of 39,000 square miles, which, by the Act of 1881, the Federal Parliament attempted to transfer to the provincial jurisdiction of Manitoba.

It is impossible to suppose that the representatives of Quebec and the other Provinces would have made any objection to the Award if ministers had in time made them aware of all these facts, or had not, on the contrary, by speeches and otherwise, persuaded them that the Award was opposed to evidence, was illegally and wrongfully adding an enormous additional territory to the Province, and was not binding in law, justice or good faith.

It is not denied that all known evidence bearing on the question, including the evidence which was not before the court in the De Reinhard case, was printed, and was put in possession of the Arbitrators by the two Governments a considerable time before the Arbitrators met to confer on the subject and to hear counsel. It is not denied, that the Arbitrators were able and impartial men. Ministers themselves while objecting to the Award have borne testimony to this. The Minister of Justice, for example (the Hon. James Macdonald, a member from Nova Scotia), during the debate in the House of Commons on the 18th February, 1880,‡ spoke of the "high standing, the high character, and the great learning" of the Arbitrators; characterized Chief Justice Harrison, one of them, as an "eminent authority;" and said of them all: "no one would imagine for a moment that either of the eminent men who composed this tribunal could come to any decision that was not dictated by the purest motives, and I have no doubt by the most searching enquiry."

It had been agreed between the two Governments that the Award of these gentlemen should be "final and conclusive;"§ and the Crown through its representative, His Excellency the Governor-General, on behalf of the Dominion, and its representative the

* Judge Ramsay's Report in Report of Committee on Boundaries, House of Commons, Canada, 1880, pp. 218, 219; Sess. Pap. H. C. Eng. (1819), pp. 57, 94, 281, 284, 285.

† Arb. Doc., p. 235; Report Brit. House of Com., 1857, on the Hudson's Bay Co., p. 374.

‡ Official Report, p. 67.

§ Ont. Bdy. Papers, 1882, pp. 246, 247, 249, 266.

lieutenant-Governor on behalf of the Province, had approved of and adopted Orders in Council embodying this agreement.

Under all these circumstances it is manifestly out of the question for this Province to abandon any part of the territory which lies within the boundaries determined by the Arbitrators. More than four years have passed since the Award, and by the course of the Dominion in disputing the Award and denying the title of this Province, the territory, comprising nearly 100,000 square miles, has during all that time, notwithstanding the repeated representations and remonstrances of the Ontario Legislature and Government, remained without settled laws in civil matters, and without a settled government.

At the last session of the Provincial Legislature, the Assembly, by one of the Resolutions already set forth, protested "against the conduct of the Federal Government in enforcing a pretended ownership in this territory ; in assuming to make sales therein without the concurrence of the Provincial authorities ; in promoting, under colour of Federal grants and licenses, the destruction of its valuable timber ; in inducing the inhabitants to set at defiance the laws and authority of this Province ; in prevailing on a neighbouring Province to assume jurisdiction in the territory by establishing courts and by other executive acts, and thereby to assist the Federal Government in neutralizing or embarrassing the territorial jurisdiction of this Province."

It is matter for profound regret, and imposes the duty of renewed remonstrance, that since this Protest of the people of Ontario through their Provincial representatives, the Dominion Government have taken no step towards remedying the wrongs so protested against, and have not even made to this Government any communication on the subject of the disputed territory, except by one brief despatch setting forth a forgotten resolution of the House of Commons, which had been passed for a temporary object at the last session of the Dominion Parliament; a resolution which, while it involved an indefinite prolongation of the unnecessary and injurious dispute, offered no relief in respect of past wrongs ; contained no proposal for the government of the country pending the delay ; submitted no proposal for the temporary legislation which so extensive a territory will from time to time require in matters of Provincial jurisdiction ; offered for the management of the lands a proposition so vague and indefinite as to make impossible its intelligent consideration ; and failed to shew any readiness to terminate the dispute which the Dominion Government had raised, and have for more than four years kept open, to the great administrative disorder of the territory, and to the great injury of this Province.

All which is respectfully submitted.

O. MOWAT.

15th November, 1882.

5.—COPY OF AN ORDER IN COUNCIL APPROVED BY HIS HONOUR THE
LIEUTENANT-GOVERNOR, THE 11th DAY OF DECEMBER, A.D. 1882.

The Committee of Council have had under consideration the annexed report of the Honourable the Attorney-General, with reference to a despatch of the Secretary of State of Canada, dated 2nd September, 1882, and communicating a Resolution of the House of Commons, passed on the 4th April, 1882, with respect to the disputed territory. The Committee advise that your Honour approve of the said report, and that a copy thereof be transmitted to the Secretary of State for the consideration of the Government of Canada.

Certified.

J. G. SCOTT,

Clerk, Executive Council, Ontario.

6.—DESPATCH OF HIS HONOUR THE LIEUTENANT-GOVERNOR OF
ONTARIO TO THE SECRETARY OF STATE.

TORONTO, 11th December, 1882.

SIR,—Adverting to your despatch of the 2nd September last (No. 1721 on 8) communicating a Resolution of the House of Commons, adopted on the 4th of April, 1882, I have the honour to transmit herewith, for the consideration of the Dominion Government, an approved Order of the Executive Council of this Province, and of the Report of the Honourable the Attorney-General therein referred to, having reference to the Northerly and Westerly boundaries of Ontario.

I have, etc.,

JOHN BEVERLEY ROBINSON,

Lieut.-Governor of Ontario.

The Honourable the

Secretary of State, Canada, Ottawa.

7.—DESPATCH OF THE SECRETARY OF STATE TO THE LIEUTENANT-
GOVERNOR OF ONTARIO.

OTTAWA, 12th December, 1882.

SIR,—I have the honour to acknowledge the receipt of your despatch, No. 1780, of the 11th inst., and its enclosures, upon the subject of the Northerly and Westerly boundaries of Ontario.

I have, etc.,

EDOUARD J. LANGEVIN,

Under-Secretary of State.

His Honour the Lieutenant-Governor
of Ontario, Toronto.



No. 23.

4th Session, 4th Legislature, 46 Vic., 1882-3.

CORRESPONDENCE

With the Federal Government, and accompanying papers, respecting the Provincial Boundary since last Session.

TORONTO:

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